

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

United States of America ,

Plaintiff,

Hon. Hugh B. Scott

01CV719S

v.

Report

&

Recommendation

One 2000 Toyota Tacoma Automobile,

Defendant.

This action revolves around the forfeiture of a 2000 Toyota Tacoma automobile under 21 U.S.C. § 881(a)(6). Pursuant to a prior order, the Government auctioned the vehicle and retains a fund of approximately \$11, 999.00 from the proceeds of the sale. Manual Hernandez and Maria Gonzales have filed claims asserting that the automobile, and hence the proceeds of the sale, belong to them. (Docket Nos. 8 and 10).

It appears that Gonzales has abandoned her claim in this matter. On February 27, 2009, a motion hearing was held with respect to the motion of Daniel J. Chiacchia, Esq. to withdraw as counsel (Docket No. 34). Chiacchia was present, as was A.U.S.A. Richard Kaufman on behalf of the United States. Manual Hernandez participated in the motion hearing by telephone. Gonzales did not appear. The Court had directed Chiacchia to take every practical measure to contact Gonzales. (Docket No. 39). Chiacchia's attempts to contact Gonzales were unsuccessful. See certified mail receipts and mail returned as undeliverable (Docket No. 41). Indeed, although he has made several attempts, Chiacchia has represented to the Court that he has not been able to contact Gonzales in several years. Further, according to Chiacchia, Gonzales told him that although the vehicle in question was registered to her, she did not have an interest in the truck

and that as far as she was concerned the truck belonged to Hernandez.(Docket Nos. 34, 37 and 40). The United States has also stated that it has been unable to locate Gonzales. Similarly, during the February 27, 2009 motion hearing, Hernandez advised the Court that he has not had any contact with Gonzales in years and that he does not know how to contact her.

It is recommended that the claim filed by Gonzales be deemed abandoned and dismissed .

Pursuant to 28 U.S.C. §636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within ten(10) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as W.D.N.Y. Local Rule 72(a)(3).

FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED HEREIN. Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed2d 435 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and W.D.N.Y. Local Rule 72(a)(3).

Please also note that the District Court, on *de novo* review, will ordinarily refuse to consider arguments, case law and/or evidentiary material which could have been, but was not, presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to W.D.N.Y. Local Rule 72.3(a)(3), “written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court’s refusal to consider the objection.**

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
March 3, 2009